

ENTERED

December 10, 2019

David J. Bradley, Clerk

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
MCALLEN DIVISION

UNITED STATES OF AMERICA,	§	
	§	
VS.	§	CIVIL ACTION NO. 7:19-CV-00403
	§	
FISHER INDUSTRIES, <i>et al</i> ,	§	
	§	
Defendants.	§	

ORDER OF DISMISSAL AS TO DEFENDANT WE BUILD THE WALL, INC.

On December 5, 2019, Plaintiff United States of America filed its Complaint for Injunctive Relief against Defendants We Build the Wall, Inc., Fisher Industries, Fisher Sand and Gravel Co., and Neuhaus & Sons, LLC. Dkt. No. 1. Plaintiff alleged that Defendant We Build the Wall, Inc., “contracted with Fisher Industries, a subsidiary of Fisher Sand and Gravel Co., to construct a bollard structure, wall or similar structure in the floodplain along the Rio Grande River in an area near RGV03 by Bentsen State and Anzalduas Park, south of Mission, TX.” *Id.* at ¶ 13.

In 1970, Plaintiff entered into a treaty with Mexico which requires Plaintiff to “prohibit the construction of works in its territory which, in the judgment of the [International Boundary and Water Commission, United States and Mexico], may cause deflection or obstruction of the normal flow of the [Rio Grande] [R]iver or of its flood flows.” Treaty to Resolve Pending Boundary Differences and Maintain the Rio Grande and Colorado River as the International Boundary, U.S.-Mex., Nov. 23, 1970, 23.1 U.S.T. 373, 391 Art. IV(B)(1) (1972). In order to ensure compliance with this requirement of the 1970 Treaty, the International Boundary and Water Commission, United States and Mexico, United States Section (“USIBWC”) requires those proposing to carry out projects in the U.S. floodplain to “submit hydraulic modeling for

their project to the USIBWC.” Dkt. No. 1 at ¶ 11. If the proposed project does not cause any deflection or obstruction of the normal flow of the river or its flood flows, then the USIBWC “issues a letter of no objection to the project proponent” and the project may move forward. *Id.*

In its Complaint, Plaintiff alleges that Defendants failed to comply with this requirement and have commenced construction on their project prior to any analysis by the USIBWC, which may lead to a violation of the 1970 Treaty as well as other statutes. *Id.* at ¶¶ 13–32. Accordingly, Plaintiff sought a temporary restraining order, and after a hearing, a preliminary injunction, enjoining Defendants from moving forward with the construction project prior to their compliance with the requirements of the USIBWC pursuant to the 1970 Treaty between the United States and Mexico. *Id.* at ¶¶ 33–35; Dkt. No. 5 at 11–12.

On the afternoon of December 5, 2019, the Court held a hearing on Plaintiff’s request for a temporary injunction. All parties were represented at the hearing except for Defendant Neuhaus & Sons, LLC, with whom Plaintiff had yet to make contact. At the hearing, We Build the Wall, Inc., represented that it did not initiate the construction project or contract with Fisher Industries. Further, the organization, through its counsel, stated that it had no property interest in the relevant land. Counsel for We Build the Wall, Inc., stated that the extent of the organization’s involvement in the project was the financial assistance it provided to Fisher Industries, the construction company overseeing the project. We Build the Wall, Inc., represented that it had contributed about five percent of the total cost of the project and that it was “best equated to a passive investor,” noting that it has no control over the project or the property. Counsel for Fisher Industries affirmed We Build the Wall, Inc.’s representations, stating that one of the Fisher entities will acquire an interest in the property and that Fisher entities are undertaking the construction.

Based on these representations, Plaintiff, as well as all other parties represented at the hearing, had no objection to the dismissal of We Build the Wall, Inc. Accordingly, considering both the parties' representations at the December 5, 2019 hearing as to We Build the Wall, Inc.'s involvement in the action as well as Plaintiff's lack of opposition to the entity's dismissal, the Court hereby **DISMISSES** We Build the Wall, Inc., as a Defendant to this action without prejudice. *See* FED. R. CIV. P. 21 ("On motion or on its own, the court may at any time, on just terms, add or drop a party.").

SO ORDERED this 10th day of December, 2019, at McAllen, Texas.

A handwritten signature in black ink, reading "Randy Crane", is written over a horizontal line.

Randy Crane
United States District Judge